

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
EASTERN DIVISION**

MICHAEL BIDDY,
Reg. #42340-074

PETITIONER

v.

2:12-CV-00108-DPM-JJV

T. C. OUTLAW,
Warden, FCI-Forrest City, AR

RESPONDENT

PROPOSED FINDINGS AND RECOMMENDATIONS

INSTRUCTIONS

The following recommended disposition has been sent to United States District Judge D. P. Marshall Jr. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than fourteen (14) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in a waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a new hearing for this purpose before either the District Judge or Magistrate Judge, you must, at the time you file your written objections, include the following:

1. Why the record made before the Magistrate Judge is inadequate.
2. Why the evidence to be proffered at the new hearing (if such a hearing is granted) was not offered at the hearing before the Magistrate Judge.
3. The details of any testimony desired to be introduced at the new hearing in the form

of an offer of proof, and a copy, or the original, of any documentary or other non-testimonial evidence desired to be introduced at the new hearing.

From this submission, the District Judge will determine the necessity for an additional evidentiary hearing. Mail your objections and “Statement of Necessity” to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol Avenue, Suite A149
Little Rock, AR 72201-3325

DISPOSITION

I. BACKGROUND

Michael Bidy is serving a sixty-three month sentence at Federal Correctional Complex Forrest City, Arkansas. (Doc. No. 6-1 at 7.) On June 11, 2012, he filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, seeking a sentence reduction under 18 U.S.C. § 3621(e). Respondent has raised the affirmative defense of failure to exhaust administrative remedies. (Doc. No. 6.)

II. DISCUSSION

Federal inmates must first exhaust their administrative remedies before filing a federal habeas petition. *Mathena v. United States*, 577 F.3d 943, 946 (8th Cir. 2009); *United States v. Chappel*, 208 F.3d 1069, 1069 (8th Cir. 2000). “Where relief is available from an administrative agency, the [petitioner] is ordinarily required to pursue that avenue of redress before proceeding to the courts; and until that recourse is exhausted, suit is premature and must be dismissed.” *Reiter v. Cooper*, 507 U.S. 258, 269 (1993). A narrow exception to this exhaustion requirement exists if the inmate shows that it would be futile to attempt to exhaust administrative remedies due to some underlying procedural or regulatory bar. *Garza v. Davis*, 596 F.3d 1198, 1203 (10th Cir. 2010).

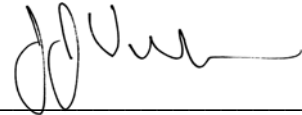
After reviewing the record, the Court concludes that Petitioner has failed to exhaust his administrative remedies. According to Mr. Clark's declaration, Petitioner proceeded through the second tier of the BOP administrative remedies, but he did not complete an appeal to the Office of General Counsel. (Doc. No. 6-1.) Pursuant to 28 C.F.R. § 542.15, completing the final appeal is a requisite to exhaustion. Since Petitioner has not shown that it would be futile to complete the administrative appeals process, his failure to exhaust is not excepted from the exhaustion requirement, and his Petition should be dismissed without prejudice.

III. CONCLUSION

IT IS, THEREFORE, RECOMMENDED that:

1. Mr. Biddy's Petition for Writ of Habeas Corpus (Doc. No. 1) be DISMISSED without prejudice.

IT IS SO ORDERED this 18th day of July, 2012.



JOE J. VOLPE
UNITED STATES MAGISTRATE JUDGE